

IC 5-11-6

Chapter 6. Additional Powers of State Examiner and Attorney General

IC 5-11-6-1

Taxpayer petition; examination of public contracts; prosecutions resulting therefrom

Sec. 1. (a) The state examiner, personally or through the deputy examiners, field examiners, or private examiners, upon the petition of twenty-five (25) interested taxpayers showing that effective local relief has not and cannot be obtained after due effort, shall make the inquiries, tests, examinations, and investigations that may be necessary to determine whether:

- (1) any public contract has been regularly and lawfully executed and performed; or
- (2) any public work, building, or structure has been or is being performed, built, or constructed in accordance with the terms and provisions of the contract, and in compliance with the plans and specifications, if any.

Upon a written petition of twenty-five (25) taxpayers the state examiner may also require all plans, specifications, and estimates to be submitted to the state examiner for corrections and approval before a contract is awarded.

(b) The state examiner, deputy examiner, and any field examiner, when engaged in making an inquiry, test, examination, or investigation under subsection (a), is entitled to examine and inspect any public records, documents, data, contracts, plans, and specifications contained or found in any public office or other place pertaining or relating to the public contract or public work, building, or structure. In addition, subpoenas may be issued to witnesses to appear before the examiner in person or to produce books and papers for inspection and examination. The state examiner, deputy, field, and private examiner may administer oaths and examine witnesses under oath either orally or by interrogatories on all matters under examination and investigation. Under order of the state examiner the examination may be transcribed, with the reasonable expense paid by the municipality in the same manner as the compensation of the field examiner is paid.

(c) The state examiner, the deputy examiner, and a field examiner may enforce attendance and answers to questions and interrogatories, as provided by law, with respect to examinations and investigations made by the state examiner, deputy examiner, field examiner, or private examiner of public offices.

(d) The state examiner, deputy examiner, any field examiner, and any private examiner, when making an examination or investigation under subsection (a), shall examine, inspect, and test the public works, buildings, or structures in the manner that the examiner sees fit to determine whether it is being performed, built, or constructed according to the contract and plans and specifications.

(e) The state examiner shall file a report covering any

examination or investigation that discloses:

- (1) fraud, collusion, misconduct, or negligence in the letting or the execution of any public contract or in the performance of any of the terms and conditions of any public contract; or
- (2) any failure to comply with the terms or conditions of any public contract in the construction of any public work, building, or structure or to perform, build, or construct it according to the plans and specifications, if any, provided in the contract;

that causes loss, injury, waste, or damage to the state, the municipality, taxing or assessment district, other public entity, or to its citizens, if it is enforceable by assessment or taxation.

(f) The report must be:

- (1) made, signed, and verified in quadruplicate by the examiner making the examination; and
- (2) filed promptly with the state examiner.

After inspection of the report, the state examiner shall file a copy of the report with the attorney general.

(g) The attorney general shall diligently institute and prosecute civil proceedings against any or all officers, individuals, and persons in the form and manner that the attorney general determines will secure a proper recovery to the state, municipality, taxing or assessment district, or other public entity injured, defrauded, or damaged by the matters in the report. These prosecutions may be made by the attorney general and the recovery may be had, either upon public official bonds, contractors' bonds, surety or other bonds, or upon individual liability, either upon contract or in tort, as the attorney general determines is wise. No action or recovery in any form or manner, or against any party or parties, precludes further or additional action or recovery in any other form or manner or against another party, either concurrently with or later found necessary, to secure complete recovery and restitution with respect to all matters exhibited, set out, or described in the report. The suits may be brought in the name of the state on the relation of the attorney general for the benefit of the state, or the municipality, taxing or assessment district, or other public entity that may be proper. The actions brought against any defendants may be joined, as to parties, form, and causes of action, in the manner that the attorney general decides.

(h) Any report described in this section or a copy duly certified by the state examiner shall be taken and received in any and all courts of this state as prima facie evidence of the facts stated and contained in the reports.

(i) If an examination, investigation, or test is made without a petition being first filed and the examination, investigation, or test shows that the terms of the contract are being complied with, then the expense of the examination, investigation, or test shall be paid by the state upon vouchers approved by the state examiner from funds available for contractual service of the state board of accounts. If such a report shows misfeasance, malfeasance, or nonfeasance in public office or shows that the terms of the plans and specifications

under which a contract has been awarded are not being complied with, it is unlawful to make the report public until the report has been certified to the attorney general.

(Formerly: Acts 1923, c.120, s.1.) As amended by P.L.3-1986, SEC.20.

IC 5-11-6-2

Reports of state examiner

Sec. 2. All the provisions of section 1 of this chapter relating to the powers and duties of the attorney general shall apply to all reports of the state examiner, as provided in section 1 of this chapter, whether such inquiries, tests, examination, or investigation and the reports made thereon shall have been made before or after March 7, 1923.

(Formerly: Acts 1923, c.120, s.2.) As amended by P.L.25-1986, SEC.40.

IC 5-11-6-3

Public wrongdoing; institution of civil proceeding

Sec. 3. If any examination or investigation made by the state examiner personally or through a deputy examiner, field examiner, or private examiner under of this chapter or of any other statute discloses:

- (1) malfeasance, misfeasance, or nonfeasance in office, or of any officer or employee;
- (2) that any public money has been:
 - (A) unlawfully expended, either by having been expended for a purpose not authorized by law in an amount exceeding that authorized by law, or by having been paid to a person not lawfully entitled to receive it; or
 - (B) obtained by fraud or in any unlawful manner; or
- (3) that any money has been wrongfully withheld from the public treasury;

a duly verified copy of the report shall be submitted by the state examiner to the attorney general, who shall institute and prosecute civil proceedings as provided in section 1 of this chapter.

(Formerly: Acts 1923, c.120, s.3.) As amended by P.L.3-1986, SEC.21.

IC 5-11-6-4

Grand jury; certified copy of reports disclosing crimes or offenses; expenses of field examination

Sec. 4. (a) If a report is filed with the attorney general that discloses any offense, the state examiner shall present a certified copy of the report and competent testimony supporting the charges made in the report to the grand jury of the county in which the offense is alleged to have been committed at its first convenient session. The attorney general shall direct, supervise, and assist in the prosecution of the offense before the grand jury and in the courts.

- (b) The per diem and actual expenses of all field or private

examiners required by the state examiner, the attorney general, or any prosecuting attorney to attend sessions of grand juries or trials in connection with the prosecution shall be paid by the state upon vouchers approved by the state examiner from funds available for office and traveling expenses for the state board of accounts.

(Formerly: Acts 1923, c.120, s.4.) As amended by Acts 1978, P.L.2, SEC.512; P.L.3-1986, SEC.22.

IC 5-11-6-5

Effect of chapter; municipality defined

Sec. 5. (a) The provisions of this chapter shall not be construed as repealing any laws in force on March 7, 1923, but shall be construed only as conferring additional duties and powers upon the state examiner, deputy examiners, field examiners, and the attorney general of the state and providing additional remedies as to the matters set forth in those laws, and all the remedies provided in this chapter shall be additional and concurrent and not exclusive.

(b) The term "municipality", as used in this chapter, shall be construed to extend to and include any county, township, city, town, school town, school township, school city, or board of park commissioners in this state.

(Formerly: Acts 1923, c.120, s.5.) As amended by P.L.25-1986, SEC.41.